

of the Fourteenth Amendment, 42 U.S.C. §1983, and Title VI of the Civil Rights Act, 42 U.S.C. §2000d et seq. with respect to the on-going actions and policies of the Defendants which discriminate against citizens of the Caucasian (white) race.

JURISDICTION AND VENUE

2.

This action arises under the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. §§ 1983, 1988 and 2000d, et seq.

3.

This court has original jurisdiction of this action pursuant to 28 U.S.C. §1331, 1343(3) and 1343(4).

4.

Venue properly lies in this Court under 28 U.S.C. §1391(b)(1) and (2) and by virtue of the Order of this Court of February 9, 2000 in Johnson v. Board of Regents, Civil Action No. 499-169, a related action. See Local Rule 3.1.

PARTIES

5.

Christopher A. Krebs is a white, male citizen of the State of Georgia. Mr. Krebs is over 18 years of age and a high school graduate. He is entitled to bring actions of this kind and nature. Mr. Krebs applied for admission to UGA, seeking admission to the Freshman class entering UGA during the Fall semester of the 2000-01 school year.

6.

Defendant Board of Regents for the University System of Georgia (Regents) is an agency of the State of Georgia and is subject to suit in actions of this kind and nature. The Board is the legal

entity operating the public institutions of higher learning in the State of Georgia, including UGA. The Board can be served with process through its Chancellor, Defendant Stephen Portch, at his business address of 244 Washington Street, SW, Atlanta, Georgia 30334.

7.

Defendant Stephen Portch is the Chairman of the Regents, and the senior official within the State university system. He may be served with process at his business address of 244 Washington Street, SW, Atlanta, Georgia 30334.

8.

Defendant Michael F. Adams is President of UGA and, as such is the final policymaking authority for UGA on admissions and all related processes. Dr. Adams may be served with process at his business address of Lustrat House, University of Georgia, Athens, Georgia 30602-1661.

CLASS ACTION ALLEGATIONS

9.

The named Plaintiff brings this action on behalf of himself and all other past, present and future similarly situated applicants for admission as students, who were disparately considered for admission to UGA or any other university system institution because of their race. This action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

10.

The class of persons sought to be represented by the named Plaintiff consists of all present and future similarly situated applications for freshman admission to UGA or other discriminating institution within the university system who have been discriminated against based on their race and all such past applicants for admission so discriminated against within the applicable statute of limitations.

11.

Upon information and belief, there are currently several hundred members of the putative class, with the potential for even greater numerosity in the future as other individuals who seek enrollment are discriminated against by the Defendants. The numerosity of the proposed class makes their joinder impractical. Moreover, since Plaintiff seeks to include in the class these future unknown applicants, joinder of all members of the putative class would be impracticable.

12.

There are common questions of law and fact among members of the class, including but not limited to, the operation of the TSI-based admission system, and the legal issue of whether Defendants can constitutionally maintain a system of racial preferences in admission to a public institution.

13.

The questions of law and fact common to the members of the class predominate over any questions which affect only individual members, making a class action the superior method for the fair and efficient adjudication of this controversy.

14.

The claims of the named Plaintiff are representative of the class as a whole as he has been the subject of the racial discrimination of which he has complained, and suffered legally redressable harm as a direct consequence of the challenged policies and practices of the Defendants. Plaintiff will fairly and adequately protect the interests of the class.

15.

Defendants have acted or refused to act on grounds generally applicable to all class members, in the development, maintenance and operation of the admissions policy challenged in this action,

thereby making final injunctive relief appropriate.

16.

Plaintiff has retained counsel with experience in prosecuting and maintaining class actions.

FACTUAL ALLEGATIONS

17.

Since 1996, UGA has employed a two-tiered admissions policy which employs racial and gender preferences in an effort to achieve its concept of diversity on campus. This concept of diversity entails a representation of non-Caucasian groups in proportion with their representation in the community at large.

18.

The UGA admissions policy for the Fall 1996 freshman class utilized a two-stage "First Notice" and "Final Notice" admission process. The "First Notice" admission stage ranked students on the basis of objective academic criteria. Seventy-five percent (75%) of the 1996 Fall freshman class (about 2,400 enrolling students) were selected in the "First Notice" admissions process by meeting a specified minimum SAT score (Total score of 970, Verbal score of 430, Math score of 400) and a minimum Academic Index of 2.75.

19.

For those remaining applications for the 1996 freshman class, those students whose AIs were above a specified minimum (2.30) and had achieved certain minimum SAT scores (Total score of 830, Verbal score of 430, Math score of 400), UGA considered other factors to generate a Total Student Index ("TSI").

20.

The 1996 TSI was composed of 15 factors. The total number of TSI points that could be

awarded in 1996 was 10.46. Academic factors (academic index, above average SAT score, high GPA, and honors or advanced placement courses) comprised a possible 6.36 points. Demographic factors (Georgia residency, residency in South Georgia or non-metropolitan areas, gender (meaning male), and ethnic diversity (meaning African-American, Hispanic, American Indian, or Multi-racial)) comprised a possible 2.60 points. Finally, extracurricular or other factors (school and community activities, summer and school year work activities, parent or sibling UGA affiliation, negative recommendations, and first generation college) comprised a possible 1.50 points.

21.

For 1996 admissions, black ethnicity was worth 1.75 points of the TSI, and was the most heavily weighted factor among the demographic components in the TSI. The TSI weight for male gender was .25.

22.

For 1996 "Final Notice" admissions, students obtaining a TSI score of 4.30 or higher were offered automatic admission. Those students who achieved a TSI score of less than 4.00 were rejected. Students whose TSI scores were between 4.00 and 4.29 had their individual files reviewed in a process called "edge-reading."

23.

"Edge Reading" is a process used to evaluate students who have already been reviewed through both the Academic Index and Total Student Index processes and have been neither screened in or out of consideration.

24.

As a part of the "edge reading" process, the applicant's file is individually "edge read" and evaluated by at least two counselors of the UGA Admissions Office. A certain number of offers are

then made to the highest ranked "edge read" applicants.

25.

The process for admission for the 1997 Fall freshman class [1997 process] at UGA was similar to the 1996 process. There were some changes in the number of factors and the factor weights for the TSI.

26.

"First Notice" admission during the 1997 process resulted in the admission of about 75% of the freshman class (about 3100 enrolling students). Those students achieving specified minimum SAT scores (Total score of 1000, Verbal score of 430, Math score of 400) and an AI of at least 2.65 were offered admission to the 1997 class.

27.

The "Final Notice" stage for 1997 admissions was divided into two phases. The first phase automatically admitted students based on academics alone, so that those achieving a specified minimum SAT score (Total score of 1000, Verbal score of 430, Math score of 400) and whose AI was above 2.50 were offered admission. Those students with less than a 2.25 AI were automatically rejected.

28.

The second phase of the "Final Notice" segment of the 1997 process itself involved two steps. Students with an AI between 2.25-2.50 were scored using the 12 TSI factors (see infra ¶47). These TSI factors and weights remained unchanged for the 1998 and 1999 freshman admission process.

29.

The total number of possible points that could be awarded based on the 1997-1999 TSI

factors was 8.46. Academic factors (academic index, high SAT scores, high GPA, and honors or advanced placement courses) comprised a possible 5.71 points. Demographic factors (Georgia residency, gender, and ethnicity) comprised a possible 1.25 points. Finally, leadership or other activity factors (extracurricular activities, summer and school year work activities, parent or sibling UGA affiliation, and first generation college) comprised a possible 1.50 points.

30.

For 1997 admissions, race (non-Caucasian) was worth .50 total TSI points. The TSI weight for gender was .25.

31.

Applicants for 1997 admission with a TSI score of 4.40 or higher were offered automatic admission. Applicants whose TSI score was between 3.79 and 4.39 had their files "edge read."

32.

The 1998 admission process at UGA was very similar to the 1997 process. The "First Notice" stage resulted in admission of about 85% of the freshman class (projected as about 3600 enrolling students) based on academic factors. Those students achieving a specified minimum SAT score (Total score of 1000, Verbal score of 430, Math score of 400) and an AI of at least 2.65 were offered admission.

33.

For the 1998 process students with at least a 2.30 Academic Index and a specified minimum SAT (Total score of 950, Verbal score of 430, and Math score of 400) were eligible for consideration under the TSI factors, which were the same as in 1997. Students with a TSI of at least 4.69 were offered automatic admission. Students whose TSI score was between 3.79 and 4.39 had their files "edge read" by at least two professional counselors in the Admissions Office.

34.

The 1999 admissions process had few changes from the 1998 process. The "First Notice" again admitted about 85% of the freshman class (projected as about 3500 of 4100 total enrolling students) based on academic factors. The specified minimum SAT score for automatic admission was not increased for the total score (1000) but was increased for both the Verbal (from 430 to 450) and Math (from 400 to 450) scores. A minimum Academic Index of 2.86 was required for automatic admission, unless the high school curriculum taken was evaluated as "most difficult," in which case a minimum AI of 2.81 was required for automatic admission.

35.

The "Final Notice" for 1999 admissions considered students with an Academic Index of at least 2.40 and a total SAT score of 950 (430 verbal and 400 Math). The 1999 process used the same TSI factors and weights as in 1997 and 1998. Those students with a TSI score of at least 4.93 were offered automatic admission. Students whose TSI score was between 4.66 and 4.92 had their files "edge read" by at least two professional counselors in the Admissions Office.

36.

For 2000 admissions, UGA removed the consideration of gender in response to litigation. However, UGA refused to alter its policy with respect to the consideration of race and continued to give .50 points for those races it preferred.

37.

Along with the use of racial preferences in its admissions policy, UGA also added an Academic Disadvantage factor and Economic Disadvantage factor. Additionally, bonus points for the achievement of an SAT score between 1150 and 1190 and bonus points for the achievement of a weighted high school grade point average between 3.00 and 3.49 were removed as factors for

consideration.

38.

The Academic Disadvantage factor allows for the addition of .40 bonus points if an applicant demonstrates attendance at one of several Georgia high schools. The Economic Disadvantage factor allows for the addition of .40 bonus points if an applicant demonstrates residency in one of several Georgia counties.

39.

Upon information and belief, the Economic Disadvantage factor is merely employed as a proxy for race as a vast majority of the counties listed exceed the Georgia average percentage of black population. Also upon information and belief, the Academic Disadvantage factor is similarly employed as a proxy for race.

40.

Plaintiff CHRISTOPHER ALLEN KREBS will graduate from Harrison High School in May of 2000. He applied for admission to UGA for the freshman class to enroll in the Fall of 2000. Mr. Krebs possesses an academic GPA of 3.40 and an ACT score of 27, which is roughly equivalent to an SAT score of 1190. Mr. Krebs was denied admission on March 30, 2000. He was not assigned any bonus points for race, economic disadvantage, or academic disadvantage during the TSI phase of the admissions process. Upon information and belief, the award of such points would have caused Mr. Krebs to be either automatically admitted or afforded further consideration in the admissions process. Such denial of admission on the basis of racial preference directly conflicts with established jurisprudence and statutory and constitutional law.

41.

Upon information and belief, one or more non-Caucasian students were admitted to a UGA

freshman class during the relevant time period who had a grade point average and/or SAT score below those of Plaintiff.

42.

One or more non-Caucasian students were considered for admission to UGA during the relevant time period based on TSI points received for their race and/or gender.

43.

The race of one or more of the non-Caucasian applicants falling into one or more of the foregoing categories referenced in the preceding paragraphs of this Complaint was a factor in the decision to admit and/or to consider the admission of such applicant to UGA during the relevant time period, and denied Plaintiff his legal and constitutional right to an equal opportunity for admission to UGA, a publicly funded, state supported institution of higher learning.

44.

Plaintiff was not admitted to UGA as an undergraduate freshman during the relevant time period in whole or in part because of his race (white).

45.

Plaintiff was not considered for admission to UGA as an undergraduate during the relevant time period in whole or in part because of his race.

46.

As a result of Defendants' unlawful use of race as an admission criterion in denying Plaintiff admission and/or equal consideration of admission to UGA, he is entitled to immediate injunctive relief because he has no adequate remedy at law.

47.

As a result of Defendants' unlawful use of race as a factor in denying Plaintiff's admission

and/or equal consideration of admission to the University of Georgia, he has also suffered emotional and mental distress, entitling him to an additional award of compensatory damages.

48.

Defendants' unlawful use of race also extends to the use of scholarships which are targeted exclusively to minority students at the expense of similarly or more qualified Caucasian students.

49.

Such scholarships include, upon information and belief, the so-called Vice-Presidential Scholarship which awards ten \$1200.00 scholarships each year and the so-called Outstanding High School Student Award which bestows a \$500.00 award to certain incoming minority students.

COUNT ONE:
RACE DISCRIMINATION UNDER TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

50.

The preceding paragraphs 1 - 49 of this Complaint are herein realleged and incorporated by this reference.

51.

The institutions of higher education in the State of Georgia are programs or activities which receive Federal financial assistance, as defined in 42 U.S.C. §2000d, et seq. and its implementing regulations at 34 C.F.R. Part 100.

52.

Defendants have, on the basis of race, subjected Plaintiff to discrimination in the higher education institutions of the State of Georgia. Defendants' discrimination on the basis of race had the purpose and the effect of preferring persons of non-Caucasian races without meeting appropriate constitutional standards. As noted by the Court in Tracy v. Board of Regents, Civil Action No.

Cv497-45 (S.D.Ga. Order of July 6, 1999), UGA “cannot constitutionally justify the affirmative use of race in its admission decisions.” Id. at 12.

53.

Defendants’ discrimination on the basis of race against Plaintiff has denied the right to equal educational opportunities and has denied Plaintiff the right to be treated in a non-discriminatory manner.

54.

Defendants’ discrimination on the basis of race was violative of 42 U.S.C. §2000d, et seq. and its implementing regulation at 34 C.F.R. Part 100, thus entitling Plaintiff to all appropriate relief provided under the statute.

COUNT TWO:
RACE DISCRIMINATION IN VIOLATION OF REGULATION
CODIFIED AT 34 C.F.R. § 100.3 PURSUANT TO § 602 OF TITLE VI

55.

The preceding paragraphs 1-54 are realleged and incorporated herein by this reference.

56.

The regulations codified pursuant to section 602 of Title VI and found at 34 C.F.R. § 100.3 provide in relevant part:

(b) Specific discriminatory actions prohibited.

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, . . . or other benefit provided under the program;

. . . .

(v) Treat an individual differently from others in determining whether he [or she] satisfies any admission, enrollment, . . . or other

requirement or condition which individuals must meet in order to be provided any service, . . . or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him [or her] an opportunity to do so which is different from that afforded others in the program . . .

. . . .

(2) A recipient, in determining the types of services . . . or other benefits, or . . . the class of individuals to whom, or the situations in which, such services, . . . other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race. . . .

57.

Through the use of their unconstitutional admissions policy and award of scholarships, Defendants have denied Plaintiff a service or benefit (i.e. admission to a public university and/or financial aid) provided through a program which receives federal assistance through the Department of Education. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(i).

58.

Through the use of their unconstitutional admissions policy and award of scholarships, Defendants have treated Plaintiff differently from others in determining whether he satisfied any admission requirements which must be met before obtaining any benefit provided through a program which receives federal assistance through the Department of Education. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(v).

59.

Through the use of their unconstitutional admissions policy and award of scholarships,

Defendants have denied Plaintiff the opportunity to participate in a program which receives federal assistance through the Department of Education by affording him an opportunity to do so which is different from that afforded non-Caucasians. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(1)(vi).

60.

Through the use of their unconstitutional admissions policy and award of scholarship, Defendants have utilized criteria or methods of administration which has the effect of subjecting Plaintiff to discrimination because of his race. Such denial contravenes the regulation set forth at 34 C.F.R. § 100.3(b)(2).

61.

Accordingly, Defendants' discrimination against Plaintiff violates the regulations set forth in 34 C.F.R. § 100.3 and creates liability under 42 U.S.C. § 1883 and 1988.

COUNT THREE:
RACE DISCRIMINATION IN VIOLATION
OF THE FOURTEENTH AMENDMENT

62.

The preceding paragraphs 1 - 61 are realleged and incorporated herein by this reference.

63.

The Fourteenth Amendment to the United States Constitution, Section 1 provides, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

64.

Under the Fourteenth Amendment, a State may not categorize citizens on the basis of race

unless the use of race is required by a compelling state interest demonstrated by a strong basis in evidence. Furthermore, the Equal Protection Clause of the Fourteenth Amendment requires that state action that distinguishes among citizens because of their race be narrowly tailored to further such compelling state interest. Defendants have not used race to further a compelling state interest, inasmuch as “diversity” is not a compelling state interest. Moreover, Defendants use of race is not narrowly tailored to any compelling interest.

65.

Accordingly, Defendants’ violations of Plaintiffs right to equal treatment under the law violates the Fourteenth Amendment to the Constitution and creates liability under 42 U.S.C. §§1983 and 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that he be afforded the following relief:

- a. That this Court temporarily and preliminarily enjoin the Defendants herein from continuing to use race as a criteria for student admission or award of scholarships until such time as the substantive issues in this lawsuit are decided;
- b. That this Court permanently enjoin Defendants herein from using race as a criterion for student admission or award of scholarships at the University of Georgia;
- c. That the actions of the Defendants complained of herein are declared to be unconstitutional and void;
- d. That the named Plaintiff receive general damages pursuant to 42 U.S.C. §1983, 42 U.S.C. § 2000d-7 and 20 U.S.C. § 1681 et seq. in an amount to be determined by a jury to compensate Plaintiff for all compensable damages suffered as a consequence of Defendants’ actions;
- e. That the Court enter an award sufficient to compensate Plaintiff for all expenses of

litigation incurred in this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. §§ 1988 and 2000d, et seq.;

f. That the Court order the admission of the named Plaintiff to the University of Georgia;

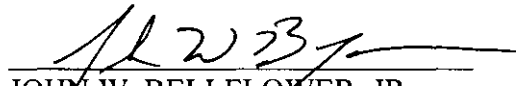
g. That the Court grant Plaintiff such additional and further relief as the Court deems just and proper.

Respectfully submitted,



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